of application in our case."

No doubt all legislation is in one sense municipal; but for the purpose of the ordinance there seems to be a clear distinction between legislation which has the effect of modifying the general principles of any branch of mercantile law, and legislation which is intended to regulate the exercise in England only of particular activities by providing for registration, licences, procedure, and penalties which can only be carried into effect in England itself. Such law is not capable of extension to the Colony, and in their Lordships' opinion for that reason is not covered by the ordinance.

It is unnecessary to rehearse the various provisions in the Moneylenders Acts which indicate that the Act is intended solely for the English regulation of the activities of moneylenders in England, and would be unsuitable and impossible of the performance in the East. In no event could it be included in the law to be administered in pursuance of the ordinance.

Counsel for the appellant preferred to meet this construction of the statute on narrower ground. The Acts, he said, are to be applied in Singapore; but *lex non cogit ad impossibilia*, and if some of the provisions are found there to be impossible of performance, e.g., registration, then there will be no duty to obey them. But such parts as are possible, as the provisions in Section 6, are incorporated into the law of Singapore. The whole Act is shipped to Singapore, but parts cannot be landed and are dumped in the harbour; the rest is imported. Their Lordships cannot accept this contention. The Act must be judged as a whole, and if it is found to be restricted to regulation of activities in England and not to be capable of general application, it is not within the scope of the ordinance at all. To take one or two sections of such an Act, divorced from their context, is to apply a new law, which is not the law of England, and so abstracted might never have been introduced into England at all.

The learned Judges, in arriving at their conclusions on this point, appear to have fortified their opinion by reference to the words used by Lord Dunedin in giving the judgment of the Board in the case above cited, that the Defence of the Realm Act and the Court Emergency Powers Act could be pleaded if the facts allowed of their application. In that case the attention of the Judicial Committee was not directed to the question raised here, which did not arise. The words used only mean if the facts in the particular case make the particular provision applicable; in that case if the performance was in fact prevented by requisition.

In the present case, therefore, their Lordships are unable to rely upon a previous decision of their own in support of the view that they have expressed. But though unfortified by authority, they entertain no doubt that the result is as stated They will therefore humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

Appeal dismissed.

Solicitors for the Appellant—*Tamplin, Joseph, Ponsonby, Ryde & Flux*, London; *Chan & Eber*, Singapore. Solicitors for the Respondent—*Speechly Mumford & Craig*, London; *Donaldson & Burkinshaw*, Singapore.

(Appellate Civil Jurisdiction)

(Murison, C. J., Burton & Whitley, JJ.)

February 21, 1933

RE MOHAMED TALHAH bin MOHAMED ARIFF (A Lunatic)

(Penang Civil Appeal No. 3 of 1933)

Practice—Lunacy—selection and appointment of committee—delegation of Judge's power to Registrar —Civil Procedure Code, Ss. 815 & 1008.

The Judge has no power under Section 815 of the Civil Procedure Code to direct an enquiry to be held by the Registrar as to who is a fit and proper person to be appointed Committee of a lunatic. An order of a Judge directing such an enquiry will vitiate all subsequent proceedings.

APPEAL from an order of Prichard, J. dated the 10th October 1932.

Proceedings were started by O.S. No. 127/32, in which Md. Hashim a brother of the lunatic was applicant, for an inquiry to be held to decide whether Md. Talhah was of unsound mind and incapable of managing himself or his own affairs and if so for the appointment of the applicant to be committee of the person and estate of Md. Talhah.

The inquiry was directed to be held and was held before the Judge in Chambers on the 10th October 1932 when the evidence of two doctors was heard and the Judge found that Md. Talhah was of unsound mind and incapable of managing his own affairs.

At this inquiry both the applicant and Md. Talhah's wife Karima were represented by Solicitors the latter *in forma pauperis*. On Karima's statement that she opposed the appointment of the applicant as committee a reference was, on the suggestion of the applicant, directed to the Registrar to report as to who was a proper person to be appointed committee. The order was in the following terms:—

> "The Court doth declare the lunatic abovenamed to be of unsound mind and incapable of managing his own affairs. And it is ordered that a reference be made to the Registrar of this Court or his Deputy to enquire and report as to who is a fit and proper person to be appointed Committee of the person and estate of the said Lunatic".

Md. Hashim took out a Summons to proceed before the Registrar and an inquiry was held before the Registrar at which evidence was called both for Md. Hashim and for Karima and the Registrar made a certificate on the 10th November 1932 in which he reported that he had held an inquiry and as a result found "that Karima binti Tuan Chik is the proper person to be appointed committee."

A summons was taken out before the Judge in Chambers to confirm this certificate and for the appointment of Karima as committee.

Md. Hashim was represented on the hearing of this Summons on the 5th December 1932 and did not oppose the application for the appointment of Karima as committee.

Subsequently Md. Hashim appealed from the order of the Judge in Chambers upon various grounds. The only ground considered by the Court of Appeal was the question of whether the order of the 10th October 1932 directing the Registrar to report who was a fit and proper person to be appointed committee was valid or not.

Conaghan for the appellant.

Pooley for the Respondent.

Cur. ad. Vult.

Murison, C. J.:—In this case the learned Judge made an order directing the Registrar to inquire and report as to "who is a fit and proper person to be appointed" Committee of a lunatic.

Now Sec. 815 (1) of the Civil Procedure Code sets out exactly in what matters such an order can be made. To report who is a fit and proper person etc. is not one of them.

In my opinion the order was not correctly made and it in effect delegated to the Registrar the power to select the person who he thought was a fit and proper person, whereas as I read sec. 815 the whole scheme of the section is that while the Registrar prepares the materials upon which fitness is to be judged it is the Judge only who has the power to say who is fit and proper.

I may add that I accept Mr. Van Someren's statement on page 687 top as to the effect of section 1008 f the Code.

I would allow the appeal and remit the case back to the trial Judge to make such order as to enquiries as he thinks fit with a view to ultimate appointment by himself. We make no order as to costs. The deposit of $250-, goes back to the appellant or his Solicitor.

Burton, J.—I concur.

Whitley, J.—I concur

Appeal allowed.

Solicitors for Appellant—*Wreford & Thornton.*

Solicitors for Respondent— *Presgrave & Matthews.*

(Original Civil Jurisdiction)

Murison C. J,

October 14, 1932.

In the Matter of Section 62 (2) of the Civil Procedure Code

and

In the Matter of District Court Summons No. 5101 of 1932

F. HOMMES & CO., LTD.....Applicants

vs.

BRASSERIE DU PHENIX.....Respondents

(Singapore Originating Summons No. 163 of 1932.)

Practice—jurisdiction—judgment entered on District Court claim—counterclaim—excess of jurisdiction—transfer of case to Supreme Court—necessity of notice of counterclaim—Courts Ordinance. S. 32; Civil Procedure Code, S. 1184 (1).

Where the defendants, against whom judgment had been entered for the amount claimed in the District Court, applied to have the proceedings transferred to the Supreme Court on the ground that they had a counterclaim involving an amount exceeding that which the District Court had jurisdiction to award, but no notice of the counterclaim was given and it was not proved that the subject-matter of the counterclaim was sufficiently connected with the claim in the District Court:—

Held, that the application for transfer of the proceedings to the superior Court must be set aside.

Originating Summons heard before Murison, C. J. on the 14th October 1932.

The respondents through their local attorneys took proceedings in District Court Summons No. 5101 of 1932 against the applicants for the recovery of the amount due on a bill of exchange drawn by the respondents in favour of the "Banque Belge pour L'Etranger" endorsed by the payee Bank to the Chartered Bank of India, Australia and China accepted generally by the applicants and dishonoured for non-payment. The authority conferred on the attorneys was confined to collection of the amount due on the bill. Judgment was entered for the respondents in the proceedings on the 5th September 1932. The applicants applied to the Supreme Court for transfer of the proceedings to that Court on the grounds that they had a counterclaim against the respondents for damages for breach of contract and that such damages exceeded in value the sum of $500 being an amount in excess of the jurisdiction of the District Court. No notice of the alleged counterclaim was given to the respondents. The originating summons was served by substituted service

Dunderdale, for the Applicants.

Vaux, for the Respondents.

Vaux for the respondents. The Originating Summons should be set aside. A written notice of the counterclaim is necessary. (S. 1184 (1) of the Civil Procedure Code.) This has not been given. The action in the District Court is *res judicata.* The claim